

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>UBI Liquidating Corp., et al.,<sup>1</sup></b>	)	<b>Case No. 10-13005 (KJC)</b>
	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>
	)	
	)	<b>Objection Deadline: February 2, 2011 at 4:00 p.m. (ET)</b>
	)	<b>Hearing Date: February 16, 2011 at 3:00 p.m. (ET)</b>

**MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION FOR  
ENTRY OF AN ORDER PURSUANT TO SECTION 1121 OF THE  
BANKRUPTCY CODE EXTENDING THE DEBTORS' EXCLUSIVE PERIODS  
IN WHICH TO FILE A CHAPTER 11 PLAN AND SOLICIT VOTES THEREON**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) submit this motion (the “Motion”), pursuant to section 1121(d) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), for the entry of an order: (i) extending the period during which the Debtors have the exclusive right to file a chapter 11 plan or plans (the “Exclusive Filing Period”) for an additional ninety (90) days, through and including April 19, 2011 and (ii) extending the period during which the Debtors have the exclusive right to

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<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are UBI Liquidating Corp. (3678), 100% Girls Ltd. (4150), 100% Girls of Georgia, Inc. (4159), 100% Girls of New York, Inc. (2149), 100 Percent Girls of New Jersey, Inc. (4167), A.S. Interactive, Inc. (3472), ASL Liquidating Corp. (4541), Ashley Stewart Apparel Corporation (4049), Ashley Stewart Clothing Company, Inc. (4051), ASMCI Liquidating Corp. (4053), ASWL Liquidating Corp. (4152), ASIL 6, Inc. (3996), ASNJ 10, Inc. (4004), Carraizo Alto Apparel Corporation (4651), Church Street Retail, Inc. (5954), Kid Spot Ltd. (2585), Kidspot of Delaware, Inc. (2596), Kidspot of Illinois, Inc. (2606), Kidspot of Michigan, Inc. (2603), Kidspot of New Jersey, Inc. (2601), Kidspot of Ohio, Inc. (4705), Kidspot of Pennsylvania, Inc. (2599), Kidspot of Texas, Inc. (3809), Large Apparel of Alabama, Inc. (0624), Large Apparel of California, Inc. (2129), Large Apparel of Connecticut, Inc. (5161), Large Apparel of District of Columbia, Inc. (8613), Large Apparel of Florida, Inc. (2209), Large Apparel of Georgia, Inc. (3894), Large Apparel of Illinois, Inc. (4650), Large Apparel of Indiana, Inc. (4055), Large Apparel of Louisiana, Inc. (3790), Large Apparel of Maryland, Inc. (5158), Large Apparel of Michigan, Inc. (9420), Large Apparel of Mississippi, Inc. (5913), Large Apparel of Missouri, Inc. (2135), Large Apparel of New Jersey, Inc. (5157), Large Apparel of New York, Inc. (5956), Large Apparel of North Carolina, Inc. (8611), Large Apparel of Ohio, Inc. (3815), Large Apparel of Pennsylvania, Inc. (4057), Large Apparel of South Carolina, Inc. (2029), Large Apparel of Tennessee, Inc. (3895), Large Apparel of Texas, Inc. (3787), Large Apparel of Virginia, Inc. (2809), Large Apparel of Wisconsin, Inc. (3898), Marianne Ltd. (3940), Marianne USPR, Inc. (2193), Marianne VI, Inc. (2206), Metro Apparel of Kentucky, Inc. (7533), Metro Apparel of Massachusetts, Inc. (1367), The Essence of Body & Soul, Ltd. (4165), UACONJI Liquidating Corp. (2976), UACONYI Liquidating Corp. (4103), and UBTHC Liquidating Corp. (5909). The Debtors’ corporate offices are located at 100 Metro Way, Secaucus, New Jersey 07094.

solicit acceptances of any such plan (the “Exclusive Solicitation Period,” and together with the Exclusive Filing Period, the “Exclusive Periods”) for an additional similar period through and including June 20, 2011,<sup>2</sup> or approximately sixty (60) days after the expiration of the Exclusive Filing Period, as extended. In support of this Motion, the Debtors respectfully represent as follows.

### **JURISDICTION**

This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **BACKGROUND**

1. On September 21, 2010 (the “Petition Date”), the Debtors commenced these chapter 11 cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases. An official committee of unsecured creditors (the “Committee”) was appointed on October 1, 2010.

3. Prior to the closing of the sale of substantially all of the Debtors’ assets on October 29, 2010, the Debtors were a leading specialty retailer of fashion-forward and inspirational apparel for plus sized urban women under the brand name of Ashley Stewart. UBI Liquidating Corp., f/k/a Urban Brands, Inc., a Delaware corporation, is the direct or indirect parent company of all of the Debtors. Until 2009, the Debtors also operated stores under the brand name of Marianne.

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<sup>2</sup> The sixtieth (60th) day following April 19, 2011 is June 18, 2011, a Saturday; June 20, 2011 is the following business day.

4. As of the Petition Date, the Debtors operated approximately 210 stores in 26 states with approximately 2,100 employees. Despite the strength of their brand names and success at individual store locations, the Debtors experienced severe liquidity issues and commenced these chapter 11 cases to preserve their business as a going concern and maximize the value of their assets through a sale of all or substantially all the Debtors' assets.

5. On October 4, 2010, the Court entered an order approving bidding procedures (the "Bidding Procedures") with respect to the sale of the Debtors' assets. In accordance with the Bidding Procedures, the Debtors received multiple competing bids for their assets and an auction (the "Auction") was held on October 25-26, 2010. Upon conclusion of the Auction, New Ashley Stewart LLC ("New Ashley") was determined to be the Successful Bidder (as defined in the Bidding Procedures) for the Debtors' assets. On October 27, 2010, the Court entered an order [Docket No. 434] approving the sale of the Debtors' assets to New Ashley. The sale closed on October 29, 2010.

### **RELIEF REQUESTED**

6. By this Motion, the Debtors seek an extension of the Exclusive Filing Period for an additional ninety (90) days from January 19, 2011 through and including April 19, 2011.<sup>3</sup> The Debtors also seek an extension of the Exclusive Solicitation Period for an additional ninety (90) days from March 20, 2011 through and including June 20, 2011. No prior request for an extension of the Exclusive Periods has been made.

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<sup>3</sup> Additionally, pursuant to Rule 9006-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, where "... a motion to extend the time to take any action is filed before the expiration of the period prescribed by the Code, the Fed. R. Bankr. P., these Local Rules, the District Court Rules, or Court order, the time shall automatically be extended until the Court acts on the motion, without the necessity for the entry of a bridge order." See Del. Bankr. LR 9006-2. As such, to the extent that the Court does not act on this Motion prior to January 19, 2011, the Exclusive Periods shall be automatically extended until the Court acts on this Motion.

7. The requested extension is reasonable given the Debtors' significant progress in their chapter 11 cases to date and their diligent efforts to wind-down the Debtors' remaining affairs in a prompt and efficient manner. The Debtors are not seeking these extensions to (i) pressure creditors to accede to a plan that is unsatisfactory to them or (ii) pursue a plan process that the Debtors believe is not feasible or in best interests of their creditors. Indeed, the Debtors are pursuing an orderly wind-down of these chapter 11 cases following their efforts to maximize value for their creditors.

### **BASIS FOR RELIEF**

8. Pursuant to section 1121(b) of the Bankruptcy Code, a debtor has the exclusive right to file a plan of reorganization during the first 120 days after the commencement of a chapter 11 case. If a debtor files a plan during this exclusive filing period, section 1121(c)(3) of the Bankruptcy Code grants the debtor an additional 60 days during which the debtor may solicit acceptances of that plan and no other party in interest may file a competing plan.

9. Section 1121(d) of the Bankruptcy Code provides that the Court may, "for cause," extend these periods: "[o]n request of a party in interest . . . and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section." 11 U.S.C. § 1121(d). Although the Bankruptcy Code does not define "cause," a number of courts have construed the term by examining the Bankruptcy Code's underlying legislative history. See, e.g., In re Perkins, 71 B.R. 294, 297-98 (W.D. Tenn. 1987); In re Lake in the Woods, 10 B.R. 338, 343-45 (E.D. Mich. 1981); In re Ravenna Indus., Inc., 20 B.R. 886, 889 (Bankr. N.D. Ohio 1982). As discussed below, the legislative history of section 1121(d) and the applicable case law support the Debtors' requested extensions of the Exclusive Periods.

10. In determining whether cause exists for an extension of a debtor's exclusive periods, courts have relied on a variety of factors, each of which may constitute sufficient grounds for extending the periods. These factors include (a) the size and complexity of the case, (b) the debtor's progress in resolving issues facing the estate and (c) whether an extension of time will harm the debtor's creditors. See, e.g., In re Gibson & Cushman Dredging Corp., 101 B.R. 405, 409-10 (E.D.N.Y. 1989); In re Grand Traverse Dev. Co. Ltd. P'ship., 147 B.R. 418, 420 (Bankr. W.D. Mich. 1992); In re Gen. Bearing Corp., 136 B.R. 361, 367 (Bankr. S.D.N.Y. 1992); In re Southwest Oil Co. of Jourdanton, Inc., 84 B.R. 448, 451-54 (Bankr. W.D. Tex. 1987). The Debtors submit that, under all these factors, the Exclusive Periods for the Debtors should be extended.

11. With respect to the first factor, both Congress and the courts have recognized that the size and complexity of a debtor's case alone may constitute cause for the extension of a debtor's exclusive periods. "[I]f an unusually large company were to seek reorganization under Chapter 11, the Court would probably need to extend the time in order to allow the debtor to reach an agreement." H.R. Rep. No. 95-595, at 231, 232, 406 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 6191, 6362. In the Texaco reorganization, for example, the court stated: "[t]he large size of the debtor and the consequent difficulty in formulating a plan of reorganization for a huge debtor with a complex financial structure are important factors which generally constitute cause for extending the exclusivity periods." In re Texaco Inc., 76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987). Here, the Debtors have thousands of creditors and, as of the Petition Date, operated hundreds of retail apparel stores in numerous states throughout the country. Moreover, the scope and breadth of the Debtors' operations were expansive as of the

Petition Date and the Debtors' cases, involving fifty-five (55) debtor entities and a prepetition credit facility, are complex.

12. The second factor courts consider in determining whether cause exists to extend a debtors' exclusive periods — the Debtors' progress in resolving issues facing the Debtors' respective estates — also justifies an extension of the Exclusive Periods. See, e.g., In re McLean Indus. Inc., 87 B.R. 830, 835 (Bankr. S.D.N.Y. 1987); Texaco, 76 B.R. at 327; In re Swatara Coal Co., 49 B.R. 898, 899-900 (Bankr. E.D. Pa. 1985). Major progress in these cases has been achieved by the Debtors as of the date hereof. Since the Petition Date, the Debtors have focused on (a) maximizing the value of their businesses through the going-concern sale of their business and (b) ensuring a smooth transition into chapter 11 while, at the same time, focusing on other time sensitive aspects of these cases. Among other significant tasks, in the first few months of these cases the Debtors focused on the marketing and sale of their assets and the closing of the sale to New Ashley. Following the closing of the sale of substantially all their assets, the Debtors have worked with New Ashley to seek the rejection and assumption and assignment of certain leases and contracts and to reconcile certain significant claims, including claims under section 365(b)(1) and 503(b)(9) of the Bankruptcy Code, that will be paid by New Ashley. In addition, the Debtors are currently in the process of preparing a chapter 11 plan of liquidation and related disclosure statement.

13. The third factor, whether the requested extension will harm creditors or other parties in interest, favors approval of the Debtors' requested extension of the Exclusive Periods. The Debtors do not believe that the requested extension will harm their creditors, rather, the Debtors are seeking the extension to maintain the *status quo* during the wind-down stage of these chapter 11 cases. The Debtors have conducted these chapter 11 cases in a manner designed to

maximize recoveries for their creditors. To that end, (i) numerous leases and contracts have been assumed and assigned to the going-concern purchaser of the Debtors' business resulting in significant cure payments being made to numerous lease and contract counter-parties; (ii) millions of dollars in employee and employee-related claims have been paid in the ordinary course of business or pursuant to an order of this Court (see Docket No. 47); (iii) the Debtors have paid and continue to pay their undisputed obligations to taxing authorities in the ordinary course of business or as otherwise authorized by the Court (see Docket No. 38); and (iv) hundreds of thousands of dollars in undisputed claims filed in these chapter 11 cases pursuant to section 503(b)(9) of the Bankruptcy Code have been assumed by, and are to be paid by, New Ashley. Consequently, the Debtors are not seeking this extension to prejudice their creditors. Conversely, the Debtors are seeking the requested extension of the Exclusive Periods to maintain the *status quo* in the chapter 11 cases pending a wind-down of the Debtors' remaining, limited, affairs. Accordingly, neither the Debtors' creditors nor any other party in interest will be harmed by the proposed ninety (90) day extension of the Exclusive Periods.

14. For all the foregoing reasons, the Debtors' request to extend the Exclusive Periods should be approved.

#### **NOTICE**

15. Notice of this Motion shall be provided via U.S. first class mail to: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Committee; and (iii) all entities requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

#### **NO PRIOR REQUEST**

16. The Debtors have not previously sought the relief requested herein from this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A, (a) granting an extension of the Exclusive Filing Period for an additional ninety (90) days through and including April 19, 2011; (b) granting an extension of the Exclusive Solicitation Period for an additional ninety (90) days through and including June 20, 2011; and (c) granting such further relief as this Court deems equitable and just.

Dated: January 18, 2011  
Wilmington, Delaware

Respectfully submitted,



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